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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning seven claims included in the third instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. An eighth claim, that of the partnership known as Kuwait Zars Link, filed with the Commission by the Government of the Russian Federation, was also before the Panel but was withdrawn during the proceedings by Zarubezstroy, the legal successor to the All-Union Production Association "Zarubezstroy", who was the Russian joint venture partner in Kuwait Zars Link. (See paragraph 161, infra).

3. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules. These include the date of filing with the Commission and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities "category 'E' claims").

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The status and functions of a Panel of Commissioners operating within the framework of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

5. Within the Commission, the Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact been incurred by a given claimant.

Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the third instalment

6. On 3 August 1998, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 3 August 1998, pursuant to article 38(c) of the Rules.

7. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in response to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-first report of the Executive Secretary which was issued on 8 October 1997 in accordance with article 16 of the Rules.

8. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants a loss adjusting firm with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed the Panel's expert consultants to prepare comprehensive reports on each of the claims, stating their opinions on the appropriate valuation of each of the compensable losses and setting forth the evidence supporting those opinions. The Panel reviewed those reports with the Panel's expert consultants.

9. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

10. This report contains the Panel's findings with respect to the following claims:

(a) GIK Hidrogradnja Civil Engineering & General Contracting Company, a corporation organized under the laws of the Republic of Bosnia and Herzegovina, which seeks compensation in the total amount of US$2,618,464 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(b) Cansult Group Limited, a corporation organized under the laws of Canada, which seeks compensation in the total amount of Kuwaiti dinar (KD)

246,080, or US$851,489 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(c) T.W. Engineering Limited, a corporation organized under the laws of Cyprus, which seeks compensation in the total amount of KD1,040,466.50, or US$3,600,230 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(d) Struers Tech A/S, a corporation organized under the laws of Denmark, which seeks compensation in the total amount of Danish krona (DK)230,968.40 and US$1,200, or US$39,765 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(e) Dorsch Consult Ingenieurgesellschaft mbH, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the total amount of deutsche mark 2,279,859.69, or US$1,459,577 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(f) Fujita Corporation, a corporation organized under the laws of Japan, which seeks compensation in the total amount of yen 5,071,237, Iraqi dinar (ID) 26,635.561, and US$56,496.38, or US$177,297 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait; and

(g) Al Manbaa Drilling Company, a corporation organized under the laws of the United Arab Emirates, which seeks compensation in the total amount of UAE dirham 1,096,909, or US$298,804 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

11. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (the "First 'E3' Report") (S/AC.26/1998/13), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. The "arising prior to" clause

12. The Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

C. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in Iraq or Kuwait, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in

Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

D. Liability of Iraq

16. "Iraq" as used in decision 9 means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, Economist Intelligence Unit, London, 1990, p. 10.)

E. Date of loss

17. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

18. With respect to the seven claims that are the subject of this report, the Panel finds that the losses occurred during the period of Iraq's occupation of Kuwait, from 2 August 1990 to 2 March 1991. It is impractical for the Panel to determine with precision the date of each individual loss that underlies the claim at issue. Accordingly, the Panel uses 2 August 1990 as the date of loss, unless otherwise established, for the claims included in this report.

F. Interest

19. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16. According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will

be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, from 2 August 1990.

G. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

H. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

I. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions established by the Panel. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a rejection of the amount claimed for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

28. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within a statement of claim and the evidence submitted.

29. At Panel meetings, the Panel's expert consultants presented to the Panel claim-specific reports. These reports include, but are not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

J. Evidentiary requirements

30. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

31. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include with the statement of claim the following particulars:

"(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;

(b) The facts supporting the claim;

(c) The legal basis for each element of the claim;

(d) The amount of compensation sought, and an explanation of how this amount was arrived at."

32. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant pursuant to the rules requesting specific information and documentation regarding the loss ("claim development letter"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

33. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. CLAIM OF GIK HIDROGRADNJA CIVIL ENGINEERING & GENERAL CONTRACTING COMPANY

34. GIK Hidrogradnja Civil Engineering and General Contracting Company ("Hidrogradnja"), a construction enterprise in the former Socialist Federal Republic of Yugoslavia and now in Bosnia and Herzegovina, seeks compensation in the amount of US$2,618,464 for contract losses and interest on contractual debt related to work performed in its capacity as a contractor on the Hemren Dam Project in Iraq.

Table 1. Hidrogradnja's claim

Claim element	Claim amount (US$)
Contract losses	2,037,862
Interest	580,602
Total	2,618,464

A. Contract losses

1. Facts and contentions

35. On 4 February 1976, Hidrogradnja entered into a contract with the Directorate General of Dams and Reservoirs of Iraq's Ministry of Agriculture and Irrigation pursuant to which Hidrogradnja was engaged to construct a rock-fill dam and a power house.

36. Hidrogradnja states that it performed work between 1971 and 1981. In 1983, and again in 1984, Hidrogradnja and Iraq agreed to a system of deferred payments that was accepted by the Mixed Yugoslav Committee for Economic Cooperation after Iraq experienced payment difficulties under the Hemren Dam Project Contract.

37. The contract losses are listed as two separate items on the category "E" claim form: the "Account C" amounts (US$325,225) and "Account 13" amounts (US$1,712,637). Each loss relates to a series of progress payments that became due and payable under the Hemren Dam Project Contract.

38. Pursuant to the 1983 and 1984 deferred payment agreements, payments of "Account C" amounts became due and payable on or before 4 August 1986. Hidrogradnja states it was deprived of the payment of US$325,225 due to Iraq's invasion of Kuwait.

39. Pursuant to the same deferred payment agreements, payments of the "Account 13" amounts were due and payable by 1988. Hidrogradnja states it was certain that it would have collected all amounts due to it on the Hemren Dam Project Contract had it not been for Iraq's invasion of Kuwait.

2. Analysis and valuation

40. In its statement of claim, Hidrogradnja indicates that the performance that created the debts in question occurred between 1971 and 1981.

41. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that the contract losses stated by Hidrogradnja relate entirely to work that was performed prior to 2 May 1990.

42. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

3. Recommendation

43. The Panel recommends no compensation for contract losses.

B. Interest on contractual debt

44. Hidrogradnja seeks compensation for interest in the amount of US$580,602 on the unpaid contractual debt. Hidrogradnja stated that the Mixed Yugoslav Committee determined that 5 per cent annual interest should be paid on all amounts subject to deferred payment, starting on 31 December of the year in which the debt was incurred and continuing until its settlement. The Panel finds that Hidrogradnja's documents demonstrate that it received all of the amounts due in 1986.

45. As the claim for interest on unpaid contractual debt is based entirely on non-compensable pre-existing debt, this loss is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

46. The Panel recommends no compensation for interest on contractual debt.

C. Recommendation for Hidrogradnja

Table 2. Recommended compensation for Hidrogradnja's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	2,037,862	nil
Interest	580,602	nil
Total	2,618,464	nil

47. Based on its findings regarding Hidrogradnja's claim, the Panel recommends no compensation for Hidrogradnja.

IV. CANSULT GROUP LIMITED

48. Cansult Group Limited ("Cansult"), a Canadian corporation, seeks compensation in the amount of US$ 851,489 for contract losses and loss of profits incurred by its Cypriot subsidiary, Cansult Limited. Cansult Limited entered into a joint venture agreement with a Kuwaiti company, Gulf Consult. The joint venture performed work in connection with the Ardiya Treatment Plant Project in Kuwait (the "Project"). Cansult stated that its claim covers only the losses incurred by Cansult Limited, which represent 50 per cent of the total losses of the joint venture. The claim does not include losses incurred by the joint venture or Cansult Limited's joint venture partner.

Table 3. Cansult's claim

Claim element	Claim amount (US$)
Contract	518,070
Loss of profits	333,419
Total	851,489

A. Contract losses

1. Facts and contentions

49. On 26 July 1990, Cansult's Cyprus subsidiary and Gulf Consult entered into an Agreement for the Supervision of Construction, Renovation and Extension Works of the Ardiya Treatment Plant and Operation and Maintenance (the "Agreement") with the Kuwaiti Ministry of Public Works. Cansult seeks compensation in the amount of US$518,070 for contract losses.

50. Commencing in April 1989, prior to the formal execution of the Agreement, Cansult performed preparatory work in relation to the Project. The contract losses include costs and disbursements incurred during this pre-contract period. The Agreement was executed on 26 July 1990. Cansult was unable to proceed on site due to Iraq's invasion of Kuwait. However, Cansult stated that it continued to incur expenses in relation to the Project during the occupation of Kuwait (including maintaining staff and a senior consultant on standby) in the expectation that Kuwait would be liberated quickly and that the Project would continue as planned.

51. The Kuwaiti Ministry of Public Works officially terminated the Agreement by a letter dated 3 August 1992 due to the invasion and its express intent not to proceed with these special works of developing and expanding the treatment plant at Ardiya.

52. Cansult seeks compensation for work performed and disbursements made from April 1989 to November 1992, as well as financial costs incurred for the performance bond, standby costs in relation to a consultant engaged to

assist Cansult on the Project, and demobilization/notice period costs in relation to 11 employees engaged on the Project.

53. Cansult makes the following claims for contract losses.

Table 4. Cansult's contract losses

Loss item	Claim amount (US$)
Work performed	173,778
Disbursements	38,670
Costs of letters of guarantee	32,927
Standby costs	176,211
Demobilization costs	96,484
Total	518,070

2. Analysis and valuation

(a) Work performed

54. Cansult seeks compensation for work performed during the period from 5 April 1989 to 30 November 1992. In its claim submission, Cansult described this loss item as "time expenses".

55. Cansult calculated the amount of work performed by applying an applicable hourly charge-out rate to the time recorded by its principals and employees for work performed by them. The recorded time expenses were itemized in the summary of time and disbursements from 5 April 1989 to 30 November 1992. Cansult also provided copies of employee time sheets that support its claim. The number of hours worked, the charge-out rate of the relevant person and a description of the activity undertaken were given in each case. There was a period between July 1990 and January 1991 when no time was recorded. Several of the entries for January 1991 to March 1991 described the activity undertaken as "reactivate project". The entries subsequent to 3 August 1992, the date the Kuwaiti Ministry of Public Works formally sought to terminate the agreement, described the activities undertaken as, inter alia, "preparation of submission", "review submission" and "update submission".

56. Time expenses in the amount of US$74,033 were incurred between April 1989 and 26 July 1990, prior to the execution of the Agreement. Those expenses relate to the initial preparation and negotiation of Cansult's tender to the Kuwaiti Ministry of Public Works. Those expenses were incurred solely in furtherance of Cansult's efforts to obtain a contract with the Kuwaiti Ministry of Public Works. The Panel finds that those expenses were not compensable because such expenses were not losses that were the direct result of Iraq's invasion and occupation of Kuwait.

57. The Panel finds that the majority of time expenses in the amount of US$99,745 incurred between January 1991 and November 1992 were "restart expenses", expenses incurred to restart the project after its interruption, which were not ordinary business expenses. The Panel finds that those expenses were incurred as a direct result of Iraq's invasion and occupation of Kuwait. However, the Panel finds that the expenses in the amount of US$5,136 incurred after 3 August 1992, the date upon which the Kuwaiti Ministry of Public Works formally terminated the contract, are not the direct result of Iraq's invasion and occupation of Kuwait and, therefore, are not compensable. The Panel finds that time expenses in the amount of US$94,609 incurred between January 1991 and 3 August 1992 are compensable as "restart expenses".

58. The Panel recommends compensation in the amount of US$94,609 for time expenses.

(b) Disbursements

59. Over a three year period, Cansult incurred expenses in the amount of US$38,670 related to travel, communications, printing, shipping and advertising as part of the process of recruiting some staff for the project. The recorded disbursements are varied and include airfares (such as airfares from Cyprus to Kuwait, Riyadh to Kuwait, Riyadh to Toronto, Cairo to Kuwait, Toronto to Kuwait), hotel expenses in Kuwait, courier fees and telephone and facsimile expenses.

60. The individual disbursements itemized by Cansult in the summary of time and disbursements from 5 April 1989 to 30 November 1992 are supported by the relevant invoices and disbursement receipts, such as telephone records and travel receipts.

61. The disbursements in the amount of US$17,401 incurred prior to 26 July 1990 are not compensable because such disbursements are not losses that are the direct result of Iraq's invasion and occupation of Kuwait. As stated above, the Panel finds that the disbursements were related to Cansult's efforts to obtain its contract with the Kuwaiti Ministry of Public Works. With respect to disbursements for restart expenses in the amount of US$21,269 incurred between January 1991 and November 1992, the Panel finds that those disbursements are losses that are the direct result of Iraq's invasion and occupation of Kuwait. Because no disbursements were incurred after 3 August 1992, the date the Kuwaiti Ministry of Public Works formally terminated the contract, the Panel finds that disbursements in the amount of US$21,269 are compensable.

62. The Panel recommends compensation in the amount of US$21,269 for disbursements.

(c) Costs of letters of guarantee

63. The Agreement required Cansult to provide a performance guarantee for the advance payment and insure the design of the project in an amount equal to 10 per cent of Cansult's consulting fees set out in the Agreement. The performance guarantee was issued by the Federal Bank of the Middle East through the Alahli Bank to the Gulf Bank. Cansult seeks reimbursement in the amount of US$32,927 for the payment of commissions charged by these three financial institutions.

64. Cansult submitted copies of invoices addressed to its Cyprus subsidiary, relating to bank charges in connection with providing the performance guarantee.

65. In 1992, Cansult sought the agreement of the Kuwaiti Ministry of Public Works to return the performance guarantee to avoid further costs. Instead, the Kuwaiti Ministry of Public Works exercised their rights under the performance guarantee, enabling the Kuwaiti Ministry of Public Works to recover the advance payment it made to Cansult.

66. In its First Report, the Panel found that commissions paid on bank guarantees were compensable as long as the interruption of the related performance was the direct result of Iraq's invasion of Kuwait. The Panel finds that Cansult has submitted sufficient evidence to support the costs incurred for letters of guarantee.

67. The Panel recommends compensation in the amount of US$32,927 for the costs of letters of guarantee.

(d) Costs of standby consultant

68. Cansult seeks compensation in the amount of US$176,211 for the standby costs of its consultant for the Project from 1 September 1990 to 30 June 1992.

69. Pending the start of the Project, the consultant was temporarily located in Cansult's office in the United Arab Emirates. Cansult attempted to mitigate its costs by employing the consultant on a part-time basis, but was unable to keep him fully productive.

70. Cansult provided confirmation by Coopers & Lybrand, United Arab Emirates, of the amounts paid to the consultant. However, Cansult did not provide information concerning the terms of his employment and/or whether the stated costs were within the terms of such employment.

71. Cansult did not provide individual receipts, invoices and time records in relation to the amounts claimed.

72. The standby costs incurred by Cansult are not compensable because Cansult failed to provide sufficient evidence of the actual loss incurred.

The Panel finds it unreasonable on the part of Cansult to retain a consultant for almost two years in the expectation that a project that had yet to begin would be activated at some uncertain date in the future. Finally, Cansult did not make a sufficient showing of its contractual relationship with the consultant or its efforts to mitigate its loss by re-deploying the consultant to another project.

73. The Panel recommends no compensation for the standby consultant costs.

(e) Demobilization costs

74. Cansult seeks compensation in the amount of US$96,484 for demobilization costs. Cansult argues that the Agreement gave rise to a contractual obligation on the part of the Kuwaiti Ministry of Public Works to pay Cansult the costs of demobilizing its staff engaged on the Project because the Kuwaiti Ministry of Public Works sought to terminate the Agreement by its letter dated 3 August 1992.

75. Cansult's list of expenses for demobilization costs for staff engaged on the project identifies eleven staff members together with their respective monthly cost, which Cansult applied to the relevant notice period (one month in each case) in order to calculate the total cost of demobilization of the relevant staff.

76. The Panel finds that the claim for demobilization costs is not compensable because the decision of the Kuwaiti Ministry of Public Works to terminate the agreement was an economic decision and is therefore, not a direct loss caused by Iraq's invasion and occupation of Kuwait. Further, Cansult failed to provide any evidence in support of its claim for demobilization costs. Although Cansult provided the names of the eleven staff members, Cansult did not provide any evidence that those staff members were engaged on the Project, that they were required for Task 1 of the Agreement, or that they were in place to begin work at the time of the invasion.

77. The Panel recommends no compensation for demobilization costs.

3. Recommendation

Table 5. Recommended compensation for Ca.sult's contract losses

Loss item	Loss amount (US$)	Recommended compensation (US$)
Work performed	173,778	94,609
Disbursements	38,670	21,269
Costs of letters of guarantee	32,927	32,927
Standby costs	176,211	nil
Demobilization	96,484	nil
Total	518,070	148,805

78. The Panel recommends compensation in the amount of US$148,805 for contract losses.

B. Loss of profits

79. Cansult stated that the joint venture would have earned a profit equal to 11.5 per cent of gross fees for the consultancy work it was to provide under the Agreement. Cansult argues that it negotiated this profit component as part of its Agreement. Cansult seeks compensation in the amount of US$333,419 for loss of profits.

80. The Panel finds that Cansult's claim for loss of profits is not compensable because Cansult failed to provide clear and convincing evidence of ongoing and expected future profitability. Arguably, the Agreement sets forth a profit component, but Cansult did not demonstrate that it achieved and retained such profit components in similar or like projects with the Kuwaiti Ministry of Public Works or any other Ministry of the Government of Kuwait.

81. The Panel recommends no compensation for loss of profits.

C. Recommendation for Cansult

Table 6. Recommended compensation for Cansult's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract loss	518,070	148,805
Loss of profit	333,419	nil
Total	851,489	148,805

82. Based on its findings regarding Cansult's claim, the Panel recommends compensation in the amount of US$148,805 for Cansult.

V. T.W. ENGINEERING LIMITED

83. T.W. Engineering Limited ("T.W. Engineering"), a Cypriot-registered company, seeks compensation in the amount of US$3,600,230 for contract losses, tangible property losses, payment or relief to others and business transaction losses. In addition, T.W. Engineering has filed a separate "contingent claim" for the entire amount claimed in the event that the Commission does not award compensation for the losses referred to above on the grounds of lack of evidence.

84. T.W. Engineering is a specialist in tunnelling and headings for large projects. At the time of Iraq's invasion of Kuwait, T.W. Engineering performed work on construction projects in Kuwait with a Kuwaiti joint venture partner, House of Trade and Contracting Company ("House of Trade").

85. With the exception of specific items that relate solely to T.W. Engineering, the claim is for 49 per cent of the losses incurred by the joint venture with House of Trade. This percentage represents the interest of T.W. Engineering in the joint venture.

Table 7. T.W. Engineering's claim

Claim element	Claim amount (US$)
Contract losses	380,131
Business transaction losses	127,163
Loss of Tangible Property	1,022,048
Payment or relief to others	6,500
Disruption of legal proceedings	2,064,388
Total	3,600,230

A. Contract losses

1. Facts and contentions

86. T.W. Engineering seeks compensation in the amount of US$380,131 for contract losses related to four construction projects, two of which were completed as of 2 August 1990 and two of which had commenced but were incomplete on that date. T.W. Engineering seeks its 49 per cent share of the amounts that were owed to the joint venture. T.W. Engineering asserts that all its records were lost or destroyed as a result of Iraq's invasion and occupation of Kuwait. It states that the relevant papers and documents were in the site offices or in the manager's flat in Kuwait City.

2. Analysis and valuation

87. With the exception of some handwritten notes, there is no evidence, such as copies of contracts, invoices showing amounts due or progress reports showing work performed, in support of the amounts claimed for the

stated contract losses. T.W. Engineering did submit a copy of its joint venture agreement with House of Trade, but did not submit any information or documentation about the projects.

88. In reply to the claim development letter, T.W. Engineering provided its audited accounts for the years 1987-1997. These accounts make no reference to T.W. Engineering's investment in, or revenue earned by, the joint venture with House of Trade. T.W. Engineering did not submit separate accounts of the joint venture. Further, there is no supporting evidence that T.W. Engineering incurred any costs or earned any revenue from its joint venture with House of Trade.

89. The Panel finds that T.W. Engineering's assertion that all evidence in support of its contract losses was lost does not exonerate it from the requirement to produce the relevant records when, according to customary business practices, some of these business records should have been kept in locations other than Kuwait. Accordingly, the Panel finds that T.W. Engineering did not submit sufficient evidence of its stated contract losses on projects with House of Trade.

3. Recommendation

90. The Panel recommends no compensation for contract losses.

B. Business transaction losses

1. Facts and contentions

91. T.W. Engineering seeks compensation in the amount of US$127,163 for business transaction losses related to three items:

(a) Loss of its share of investment in the joint venture with House of Trade (US$84,775);

(b) A loan by a director of T.W. Engineering to pay Kuwaiti lawyers in connection with the liquidation of T.W. Engineering's previous joint venture partner, Contracting and Petroleum Works Company, Kuwait ("Contracting and Petroleum Works") (US$28,824); and

(c) A loan by a director of T.W. Engineering to enable T.W. Engineering to continue its operations and enter into the joint venture with House of Trade after the failure of the joint venture with Contracting and Petroleum Works (US$13,564).

92. T.W. Engineering provided a copy of the joint venture agreement between T.W. Engineering and House of Trade dated 7 October 1987. Under the joint venture agreement, T.W. Engineering was obliged to provide equipment for the joint venture and House of Trade was to provide the capital. In relation to the loss of its share of investment in the joint venture with House of Trade, T.W. Engineering argues it was unable to

exploit the commercial expertise that it had invested in the joint venture with House of Trade. In relation to the loans by its director, T.W. Engineering was unable to provide any supporting evidence.

2. Analysis and valuation

93. The Panel finds that the claim for the loss of T.W. Engineering's share in the joint venture is not compensable, as it was not a direct result of Iraq's invasion and occupation of Kuwait.

94. T.W. Engineering's accounts do not refer to its investment in the joint venture with House of Trade or to the loans. The Panel, therefore, finds that T.W. Engineering did not submit sufficient evidence of its stated loss.

3. Recommendation

95. The Panel recommends no compensation for business transaction losses.

C. Loss of tangible property

1. Facts and contentions

96. T.W. Engineering seeks compensation in the amount of US$1,022,048 for the loss of plant and equipment owned by the joint venture with House of Trade.

97. T.W. Engineering stated that the equipment in question was either located at T.W. Engineering's sites or its manager's residence. T.W. Engineering stated that all equipment and other personal property was lost due to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

98. T.W. Engineering submitted an inventory of the relevant equipment prepared by T.W. Engineering and notes prepared by its former on-site manager. T.W. Engineering's reply to the claim development letter included a statement dated 21 August 1998 from an engineer who allegedly worked with the joint venture from February 1988 to August 1990. The engineer stated that the description of the equipment in the manager's notes and the values attributed to that equipment appeared realistic.

99. T.W. Engineering did not provide sufficient evidence that it (in its capacity as a partner in the joint venture) was the owner of the property at the relevant time. Nor is there sufficient proof of the value of the equipment or the cause of the loss. There is no indication of the basis of the valuation, whether original cost less depreciation or a higher replacement value, and there is no indication of the age of the equipment. As in the claim for business transaction losses, the accounts submitted by T.W. Engineering do not refer to T.W. Engineering's investment in the joint

venture with House of Trade. The Panel also notes that there is no mention of the joint venture in T.W. Engineering's financial records.

100. T.W. Engineering's assertion that all evidence in support of its loss of tangible property was lost does not exonerate it from the requirement to produce the relevant records when, according to customary business practices, some of these business records should have been kept in locations other than Kuwait. Accordingly, the Panel finds that T.W. Engineering did not submit evidence to support its allegations of loss of tangible property.

3. Recommendation

101. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

102. T.W. Engineering seeks compensation in the amount of US$6,500 for amounts paid to three employees of either T.W. Engineering or the joint venture.

103. In his affidavit, the former managing director of T.W. Engineering stated that he advanced US$4,000 and US$625 to two employees to assist with their repatriation costs and other expenses after they were trapped in Kuwait without work and money. It is unclear for what purpose the remaining amount of US$1,875 was used.

104. T.W. Engineering did not provide evidence that the amounts were actually paid or that the amounts advanced by the managing director were reimbursed by T.W. Engineering. The Panel finds that T.W. Engineering did not submit sufficient evidence to support its allegations of expenses incurred for payment or relief to others.

105. The Panel recommends no compensation for payment or relief to others.

E. Other claims

1. Disruption of legal proceedings

106. On 12 September 1998, T.W. Engineering increased its original amount claimed from US$906,574 to US$2,064,388 for losses related to the disruption of legal proceedings against the liquidator of T.W. Engineering's previous joint venture partner, Contracting and Petroleum Works, with which T.W. Engineering entered into a joint venture agreement in 1984. Contracting and Petroleum Works went into liquidation some time during 1986 and T.W. Engineering commenced legal proceedings against the liquidator for recovery of amounts owed to it by Contracting and Petroleum Works. The proceedings allegedly came to a standstill due to Iraq's invasion and occupation of Kuwait.

107. The Kuwaiti court entered a judgement on 21 November 1995 in favour of T.W. Engineering. T.W. Engineering seeks compensation for the delay in obtaining the court judgement, which it states was the result of the disruption of the Kuwaiti judicial system during the occupation and after the liberation of Kuwait.

108. The Panel finds that the causal link is too remote for the stated loss to be compensable. The amount sought is the result of work performed in 1986. T.W. Engineering provided no evidence to indicate whether the amount of the judgment or the ability of T.W. Engineering to collect on the judgment was affected by Iraq's invasion and occupation of Kuwait.

109. The Panel recommends no compensation for disruption of legal proceedings.

2. Destruction of documents

110. T.W. Engineering seeks compensation in the amount of US$3,600,230 as a "contingent claim" in the event that the Commission decides that there is insufficient documentation to make an award of compensation. T.W. Engineering states that, "[t]he loss would be the inability effectively to pursue the main claim if the Commission felt that it was insufficiently documented".

111. The Panel finds that the inability of a claimant to provide sufficient evidence due to the alleged destruction of documents during Iraq's invasion and occupation of Kuwait does not afford a new ground for a claimant to succeed on an alternative claim. Compensating subsidiary claims of this nature would encourage claimants to circumvent the evidentiary standard required of claimants to demonstrate both the elements of actual loss and a direct causal link with Iraq's invasion and occupation of Kuwait.

112. The Panel recommends no compensation for the destruction of documents.

F. Recommendation for T.W. Engineering

Table 8. Recommended compensation for T.W. Engineering's claim

Claim element	Claim amount (US$)	Recommended Compensation (US$)
Contract losses	380,131	nil
Business transaction losses	127,163	nil
Loss of tangible property	1,022,048	nil
Payment or relief to others	6,500	nil
Disruption of legal proceedings	2,064,388	nil
Total	3,600,230	nil

113. Based on its findings regarding T.W. Engineering's claim, the Panel recommends no compensation.

VI. STRUERS TECH A/S

114. Struers Tech A/S ("Struers") is a publicly owned Danish corporation that sells and distributes metallographic equipment through a worldwide network of dealers. Struers seeks compensation in the amount of US$39,765 for salary and financial support paid to its employee, a regional sales manager, who was detained in Kuwait from 5 August 1990 until 12 December 1990 and for "estimated lost business opportunities".

Table 9. Struers' claim

Claim amount	Amount claimed (US$)
Payment or relief to others	
Salary	16,418
Financial support	6,650
Business transaction losses	16,697
Total	39,765

A. Payment or relief to others

1. Salary

(a) Facts and contentions

115. Struers seeks compensation in the amount of US$16,418 for salary paid to its employee during his period of detention in Iraq. In its reply to the claim development letter, Struers provided a statement from the employee which described the circumstances of his detention. Struers also provided a copy of the employment contract.

(b) Analysis and valuation

116. The Panel finds that Struers' employee was involuntarily detained in Baghdad between 5 August 1990 and 12 December 1990 during a visit to provide sales support to Struers' Iraqi dealer. The employee flew to Baghdad from Copenhagen on 27 July 1990 and intended to return to Copenhagen on 5 August 1990 but was held hostage in Baghdad until granted permission to leave on 12 December 1990. The employee returned to Copenhagen on a flight from Baghdad via Frankfurt. Struers provided copies of pages from the employee's passport, salary statements and the employee's statement as evidence.

117. The Panel finds that the salary costs are compensable because the losses are a direct result of Iraq's invasion and occupation of Kuwait. Struers provided evidence of the detention in Iraq as well as evidence of the amounts paid. Struers submitted copies of the gross monthly salary slips for its employee and calculated the total salary due for the period of detention as US$16,418.

(c) Recommendation

118. The Panel recommends compensation in the amount of US$16,418 for salary paid during detention.

2. Financial support during detention

(a) Facts and contentions

119. Struers seeks compensation in the amount of US$6,650 for three separate items relating to funds provided to the employee during his involuntary detention in Baghdad.

Table 10. Struers' claim for financial support

Loss item	Amount claimed (US$)
Financial support by the Danish Embassy	5,450
Transfer of money and costs involved	300
Outlay by private party	900
Total	6,650

120. In support of its claim for financial support given by the Danish Embassy in Baghdad, Struers provided:

(a) a document entitled "pledge to repay loan" dated 23 August 1990 and signed by the employee; and

(b) an invoice dated 14 November 1990 issued by the Foreign Ministry of Denmark and addressed to Struers requesting the company to repay the loan granted to the employee on 23 August 1990.

121. In support of its claim for transfer of money and costs involved, Struers provides a letter dated 2 November 1990 from Struers addressed to the Foreign Ministry of Denmark enclosing a cheque in settlement of the transfer of US$300 to its employee held in Baghdad.

122. In support of its claim for the outlay by a private party, Struers provided:

(a) a debit note from Unibank, Copenhagen branch, confirming payment of the amount of US$900 to an account with the British Bank of the Middle East, Amman branch, with specific references to the parties; and

(b) a letter dated 1 December 1991 from the private party that requests transfer by Struers to the dealer's account with the British Bank of the Middle East, Amman branch, of the amount of US$900.

(b) Analysis and valuation

123. In relation to financial support provided by the Government of Denmark, the secretariat performed a cross-check with the category "F" claim filed by the Ministry of Foreign Affairs of Denmark, which revealed that the Government of Denmark had filed a claim in connection with the evacuation of Struers' employee from Baghdad. One of the panels appointed to review claims in category "F" has already considered the claim filed by the Government of Denmark for the same amounts and has recommended that the Government of Denmark be paid compensation as set out in its report and recommendations on part one of the first instalment of category "F" claims (S/AC.26/1997/6).

124. The Panel finds that Struers' request for compensation for the losses incurred in connection with the evacuation of its employee (US$5,450 and US$300) duplicates the Government of Denmark's claim and is therefore not compensable.

125. The Panel finds that the losses incurred for food, accommodation and other expenses supplied by the private party does not duplicate any other claim filed with the Commission. Further, the Panel finds there is sufficient evidence that the outlay was made and subsequently reimbursed by Struers.

(c) Recommendation

126. The Panel recommends compensation in the amount of US$900 for financial support during detention.

3. Business transaction losses

127. Struers provided no explanation or evidence in support of its claim for estimated lost business opportunities other than to write the amount on the claim form. Struers failed to provide any additional information or documentation in reply to the claim development letter. Accordingly, the Panel finds that Struers failed to demonstrate the circumstances and amount of the claimed loss as required by article 35(3) of the Rules.

128. The Panel recommends no compensation for business transaction losses.

B. Recommendation for Struers

Table 11. Recommended compensation for Struers' claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Salary	16,418	16,418
Financial support	6,650	900
Business transaction losses	16,697	nil
Total	39,765	17,318

139. Based on its findings regarding Struers' claim, the Panel recommends compensation in the amount of US$17,318.

VII. DORSCH CONSULT INGENIEURGESELLSCHAFT MBH

130. Dorsch Consult Ingenieurgesellschaft mbH ("Dorsch"), a German company, seeks compensation in the amount of US$1,459,577 for engineering consultancy services provided pursuant to an agreement entered into on 30 January 1975 between Dorsch and the Ministry of Works and Housing of Iraq (the "Agreement").

131. Dorsch performed its obligations under the Agreement and was remunerated according to the terms of the Agreement until the mid-1980s, when Iraq ceased making payments.

132. In February 1990, Iraq allegedly acknowledged the unpaid contractual amounts after intervention by German official representatives and politicians. In letters dated 5 and 6 February 1990, Iraq directed the Rafidain Bank to transfer the settlement amounts to Dorsch. Dorsch stated that those transfers never took place as a result of Iraq's invasion of Kuwait and seeks compensation for those amounts.

133. The Agreement contains very limited information about the dates for the completion of the consultancy work. However, the correspondence from the Ministry of Works and Housing dated 5 and 6 February 1990 clearly directs the Rafidain Bank, Harithiya Branch, to transfer funds to Dorsch. From this evidence, the Panel draws the inference that all work under the Agreement was completed prior to February 1990. Accordingly, the claim relates entirely to work that was completed prior to 2 May 1990 and is not within the jurisdiction of the Commission.

134. Based on its findings regarding Dorsch's claim, the Panel recommends no compensation.

VIII. FUJITA CORPORATION

135. Fujita Corporation ("Fujita"), a Japanese construction company, seeks compensation in the amount of US$177,297 for costs incurred in evacuating 13 employees working in Iraq and for non-operative and idle costs.

136. Fujita was engaged by the Government of Iraq to work on the construction of the Expressway No. 1 in Iraq ("Project"). The construction of the Project was completed in December 1989 and, on 2 August 1990, the maintenance period of the Project contract was in operation.

137. In its supplement to the claim, Fujita added two further claims: a dismissal allowance for eleven Filipino engineers (US$33,000); and standby expenses for a project manager (US$ 13,802). The Panel finds that a claimant shall not be allowed to increase the amount of its claim in subsequent submissions. The Panel views supplements and replies to inquiries as a means by which a claimant may offer additional evidence in support of original losses, but a claimant may not add new loss items to the claim. Accordingly, the Panel does not consider the two new claims.

Table 12. Fujita's claim

Claim element	Amount claimed (US$)
Payment or relief to others	66,632
Business transaction losses	110,665
Total	177,297

A. Payment or relief to others

1. Facts and contentions

138. Fujita seeks compensation for the costs of evacuating two Japanese employees and eleven Filipino employees from Baghdad to their respective home countries. In addition, Fujita seeks compensation for the travel expenses of the Japanese employee who accompanied the Filipino staff from Amman to the Philippines, expenses of its head office in Tokyo and medical expenses for one Japanese employee.

Table 13. Fujita's claim for payment or relief to others

Loss item	Amount claimed (US$)
Travel expenses for 2 Japanese employees	12,819
Travel expenses for 11 Filipino employees	45,724
Travel expenses for escort	6,361
Head office expenses	338
Medical expenses	1,390
Total	66,632

2. Analysis and valuation

(a) Travel expenses

139. The two Japanese employees were on a business trip to Kuwait on 2 August 1990 and were held for more than one month as "guests" by the Iraqi authorities. Although they were released from "guest" status in September 1990, they were still refused exit visas for a period of time. One employee obtained an exit visa in October 1990, while the other received his in December 1990. The eleven Filipino employees returned to the Philippines on 24 August 1990 accompanied by a Japanese staff member who flew from Tokyo to Amman to escort them back to their country.

140. Fujita provided the names and passport details of all employees who were evacuated. Fujita also provided copies of receipts and invoices in relation to airfares, hotel and miscellaneous travel expenses, including expenses in the amount of US$543 for a "welcome home" dinner.

141. The Panel finds that Fujita submitted sufficient evidence of its travel expenses in the amount of US$64,890 incurred for the evacuation and repatriation of its employees. However, the expenses in the amount of US$543 for the "welcome home" dinner are not compensable.

142. The Panel recommends compensation in the amount of US$64,347 for travel expenses.

(b) Expenses of head office in Tokyo

143. Fujita seeks compensation in the amount of US$338 for head office expenses. Fujita, however, does not submit sufficient evidence of those expenses nor does it explain how those expenses are losses directly caused by Iraq's invasion and occupation of Kuwait.

144. The Panel recommends no compensation for head office expenses.

(c) Medical expenses

145. Fujita states that a Japanese employee, forced to stay in Iraq for more than two months, had to be hospitalized upon his return to Japan. Fujita provides no further information or documentation in respect of this loss. The Panel finds that Fujita did not submit sufficient evidence in support of the costs incurred for medical expenses.

146. The Panel recommends no compensation for medical expenses.

3. Recommendation

147. The Panel recommends compensation in the amount of US$64,347 for payment or relief to others.

B. Business transaction losses

1. Facts and contentions

148. Fujita seeks compensation in the amount of US$110,665 for costs incurred during a "non-operative and idle period" from 2 August 1990 to 2 March 1991. Fujita stated it was unable to carry on any business activities during that period but it was required to maintain the office and pay salaries for the local employees as follows:

Table 14. Fujita's claim for business transaction losses

Loss item	Amount claimed (US$)
Salaries of local employees	51,129
Office rent in Iraq	19,053
Miscellaneous office expenses	14,448
Salaries of detained employees	26,035
Total	110,665

149. In support of its claim for non-operative and idle costs, Fujita provided copies of payment vouchers, receipts and invoices. However, according to Fujita, many other relevant documents relating to this portion of the claim were kept in Fujita's Baghdad office. Consequently, Fujita stated that it was unable to provide any additional supporting documentation.

2. Analysis and valuation

(a) Salaries of local employees

150. Fujita submitted sufficient supporting evidence for only a portion of the salaries of its local staff during the period 2 August 1990 to 2 March 1991. The Panel finds that Fujita submitted payment vouchers in the total amount of US$31,767 for the salaries of its office staff for the months

August-November 1990 and for the salary of its night watchman for this same period and January and February of 1991. However, Fujita did not submit sufficient documentation to support the stated loss in the amount of US$19,362 for salaries of its office staff for December of 1990 and January 1991 to March 1991.

151. The Panel recommends compensation in the amount of US$31,767 for the salaries of local employees.

(b) Office rent in Iraq

152. The Panel finds that Fujita's claim for office rent in Baghdad is not compensable because the rental payments would have been incurred by Fujita regardless of Iraq's invasion and occupation of Kuwait. Furthermore, Fujita provided no evidence in support of this portion of its claim. Fujita did not provide a copy of the lease and the submitted rental receipt is inadequate in description.

153. The Panel recommends no compensation for residence and office rent.

(c) Miscellaneous office expenses

154. Fujita seeks compensation for the cost of electricity, telephone charges, travel expenses and food and fuel costs. Fujita provided no evidence in support of miscellaneous office expenses because all of the relevant records were kept in its Baghdad office. Fujita also failed to demonstrate that these office expenses were in excess of the expenses that it would have incurred but for Iraq's invasion and occupation of Kuwait. The Panel finds that these expenses are fixed costs that would have occurred regardless of Iraq's invasion and occupation of Kuwait.

155. The Panel recommends no compensation for miscellaneous office expenses.

(d) Salaries of detained employees

156. Fujita seeks compensation in the amount of US$26,035 for the salaries of two Japanese employees who were detained in Iraq as described in paragraph 139, supra. Fujita submitted sufficient evidence of this loss, including the relevant salary statements and pay slips.

157. The Panel finds that the salaries of foreign staff working in Iraq and Kuwait, which were paid after productive work had ceased until their repatriation, are compensable.

158. The Panel recommends compensation in the amount of US$26,035 for the salaries of foreign staff.

3. Recommendation

159. The Panel recommends compensation in the amount of US$57,802 for business transaction losses.

C. Recommendation for Fujita

Table 15. Recommended compensation for Fujita's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Payment of relief to others	66,632	64,347
Business transaction losses	110,665	57,802
Total	177,297	122,149

160. Based on its findings regarding Fujita's claim, the Panel recommends compensation in the amount of US$122,149.

IX. KUWAIT ZARS LINK

161. On 5 October 1998, the Commission received a notice of withdrawal of the claim by Kuwait Zars Link from the Government of the Russian Federation. In the light of this communication, the Panel issued a procedural order on 23 November 1998, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by Kuwait Zars Link.

X. AL MANBAA DRILLING COMPANY

162. Al Manbaa Drilling Company ("Al Manbaa"), a United Arab Emirates company, seeks compensation in the amount of US$298,804 for tangible property losses incurred in its capacity as a sub-contractor engaged to work on construction projects in Kuwait.

163. The secretariat sent an informal notification under article 15 of the Rules to Al Manbaa on 26 March 1998 requesting that Al Manbaa rectify certain formal deficiencies in its claim submission on or before 25 September 1998. Al Manbaa did not submit a reply.

164. On 5 October 1998, the secretariat sent a formal notification under article 15 of the Rules to Al Manbaa. Although Al Manbaa did not submit a category "E" claim form or a statement of claim, it did submit documents related to its claim. Al Manbaa submitted a copy of a sub-contract agreement entered into between Al Manbaa and a Kuwaiti contractor on 27 January 1990 pursuant to which Al Manbaa agreed to carry out work on a road-crossing. Al Manbaa also provided copies of a general co-operation and an agency agreement, each dated 20 April 1990, entered into between Al Manbaa and a Kuwaiti contractor pursuant to which Al Manbaa agreed to carry out jacking, soil stabilization and mining-related services Al Manbaa also provided copies of invoices evidencing the purchase of certain steel piping and jacking equipment between February and May 1990.

165. The Panel finds that Al Manbaa did not submit sufficient information or documentation to support its asserted tangible property losses.

166. Based on its findings regarding Al Manbaa's claim, the Panel recommends no compensation.

XI. SUMMARY OF RECOMMENDATIONS BY CLAIMANT

167. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) GIK Hidrogradnja Civil Engineering & General Contracting Company (Bosnia and Herzegovina): nil;

(b) Cansult Group Limited (Canada): US$148,805;

(c) T.W. Engineering Limited (Cyprus): nil;

(d) Struers Tech A/S (Denmark): US$17,318;

(e) Dorsch Consult Ingenieurgesellschaft mbH (Germany): nil;

(f) Fujita Corporation (Japan): US$122,149; and

(g) Al Manbaa Drilling Company (United Arab Emirates): nil.

Geneva, 15 December 1998

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner